

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CAROL MILLER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

**BATH SAVER, INC. and BATH
FITTER MANUFACTURING INC.,**

Defendants.

Case No. 1:21-cv-01072-JPW

JUDGE JENNIFER P. WILSON

ELECTRONICALLY FILED

**PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff Carol Miller (“Plaintiff”) and Defendants Bath Saver, Inc. and Bath Fitter Manufacturing Inc. reached a class action settlement agreement (“Settlement Agreement” or “Agreement”) that establishes a non-reversionary Settlement Fund in the amount of \$1,950,000 for the benefit of the Settlement Class. Defendants have also agreed to take remedial measures aimed at curbing future potentially violative calls.

If approved, the Agreement will bring an end to what has otherwise been, and likely would continue to be, hard-fought litigation centered on unsettled legal questions.

This motion seeks the entry of an order providing for, among other things:

1. Preliminary approval of the Settlement Agreement;
2. Preliminary certification of the Settlement Class and appointment of Plaintiff as class representative and Avi Kaufman and Stefan Coleman as Class Counsel;
3. Approval of the Settlement Administrator;
4. Approval of the Notice Plan describing: (a) the Settlement and Settlement Class Members' rights; (b) the proposed release of claims; (c) Plaintiff and Class Counsel's request for attorneys' fees and expenses and a service payment; and (d) the procedures for opting-out of and for objecting to the Settlement Agreement.
5. Approval of the claims process; and
6. The scheduling of a Final Approval Hearing to consider final approval of the Settlement.

For the reasons set forth below and in Plaintiff's Brief, filed concurrently, the Parties' proposed Agreement is exceedingly fair and well within the range of preliminary approval. First, it provides immediate monetary and remedial relief, including preventing further unsolicited telemarketing calls, for Settlement Class Members where their recovery, if any, would otherwise be uncertain given Defendants' consistent denials of all liability and its vigorous defense of the litigation. Second, the settlement was reached only after discovery into the most significant issues in the case, including the number of

calls, the recipients of calls, and the strength of the Defendants' consent, established business relationship and safe harbor defenses. Third, prior to reaching the settlement, the Parties engaged in extensive arm's-length negotiations, including a full-day mediation with mediator Hunter Hughes. Fourth, the settlement was not conditioned on any amount of attorneys' fees for Class Counsel or service award for Plaintiff, underscoring the fairness of the process. For all these reasons, and as further described in Plaintiff's Brief, Plaintiff respectfully requests that the Court preliminarily approve the Settlement Agreement.

DATED this 2nd day of September, 2022. Respectfully submitted,

/s/ Avi R. Kaufman

Avi R. Kaufman (Trial Counsel)

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*Attorneys for Plaintiff and the putative
Class*

CERTIFICATE OF CONCURRENCE

I HEREBY CERTIFY that on September 2, 2022, I conferred with Defendants' counsel to request concurrence in the foregoing Motion for Preliminary Approval of the Class Action Settlement, and Defendants' counsel concurs with the Motion.

/s/ Avi R. Kaufman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 2, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and it is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Avi R. Kaufman